

## REQUEST FOR SUBSTANTIATION FROM AN AFFECTED BUSINESS

### **Current version**

(date stamp)

#### **Certified Mail**

#### **Return Receipt Requested**

(Addressee)

Re: (Reference the RIN number and or the Information which is the subject of the final confidentiality determination.)

Dear (name of the representative of the Affected Business):

The Environmental Protection Agency (EPA) has received a request under the Freedom of Information Act (FOIA) for certain records pertaining to (description of the information which is the subject of the final confidentiality determination). You asserted a business confidentiality claim covering (all or part) of this information. In accordance with EPA's Freedom of Information Act regulations (40 C.F.R. Part 2), the request has been initially denied to afford you an opportunity to substantiate your claim before a final determination is made.

This letter is to notify you that the EPA (appropriate legal office) will be making a final confidentiality determination concerning this information. If you feel that some or all of the above information is entitled to confidential treatment, please specify which portions of the information you consider confidential. Please be specific by page, paragraph and sentence when identifying the information subject to your claim. Any information not specifically identified as subject to a confidentiality claim will be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being subject to your claim, please answer the following questions:

1. For what period of time do you request that the information be maintained as confidential? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If

so, why should the information still be considered confidential?

4. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
5. Is the information contained in any publicly available material such as promotional publications, annual reports, articles, etc.? Is there any means by which a member of the public could obtain access to the information?
6. For each category of information claimed as confidential, discuss with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
7. Do you assert that the information is “voluntarily submitted” as defined at 40 CFR sec. 2.201(i)? If so, explain why, and how disclosure would tend to lessen EPA’s ability to obtain similar information in the future.
8. Any other issue you deem relevant.

Please note that you bear the burden of substantiating your confidentiality claim pursuant to 40 C.F.R. 2.208(e). Conclusory allegations will be given little or no weight in the determination. If you wish to claim any of the information in your response as confidential, you must mark the response “**CONFIDENTIAL**” or with a similar designation, and must bracket all text so claimed. Information so designated will be disclosed by EPA only to the extent allowed by, and by means of the procedures set forth in, 40 CFR Part 2. If you fail to claim the information as confidential upon submission it may be made available to the public without further notice to you.

Your comments must be postmarked or hand delivered to this office by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments, but the request must be made to the (appropriate legal office) before the end of the 15-day period. Except in extraordinary circumstances, no extension will be made without the permission of the requester. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim, and EPA will be free to release the information.

Should you have any questions in this matter, please call me at (telephone).

Sincerely,

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Signature and Title

**NOTE:** Please be sure to check with your FOI Officer or FOI Coordinator to determine whether the affected business has designated a specific person or office to receive this letter. If they have, you must address the request for substantiation to the designated person or office. (see 40 CFR 2.213).